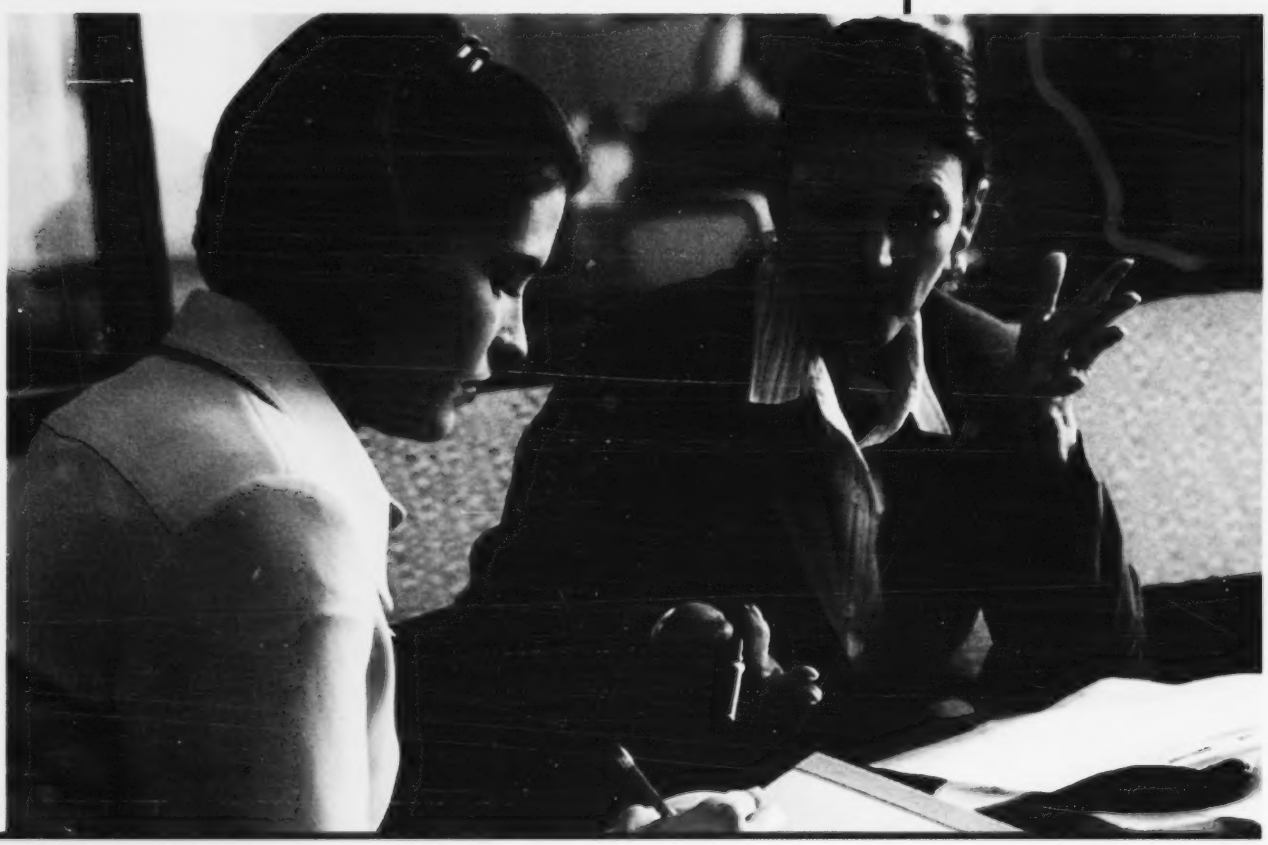
The Law Society of Upper Canada | Barreau du Haut-Canada

Report to the Attorney General of Ontario

on the

Implementation of Paralegal Regulation in Ontario

Pursuant to subsection 63.0.1(2)
of the *Law Society Act*



JANUARY 2009

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January 2009

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Preamble

The *Law Society Act* requires The Law Society of Upper Canada to submit a report to the Attorney General on the implementation of paralegal regulation in Ontario. The relevant provisions of the Act read as follows:

Report after two years

Definition

63.0.1 (1) In this section,

"review period" means the period beginning on the day on which the Access to Justice Act, 2006 receives Royal Assent and ending on the second anniversary of that day.

Report by Society

(2) The Society shall,

(a) assess the extent to which the by-laws made by Convocation during the review period in relation to persons who provide legal services in Ontario are consistent with the principles set out in the document titled "Task Force on Paralegal Regulation Report to Convocation" dated September 23, 2004, available from the Society;

(b) prepare a report of the assessment; and

(c) give the report to the Attorney General for Ontario within three months after the end of the review period.

Tabling in Assembly

(3) The Attorney General shall submit the report to the Lieutenant Governor in Council and shall then lay the report before the Assembly if it is in session or, if not, at the next session.

The *Access to Justice Act, 2006* received Royal Assent on October 19, 2006. Thus, the "review period" is the two-year period from October 19, 2006 to October 18, 2008. Accordingly, this report assesses the extent to which the by-laws made by Convocation during this period are consistent with the principles set out in the document entitled *Task Force on Paralegal Regulation Report to Convocation* dated September 23, 2004.

The format of this report is to present each of the recommendations of the 2004 report in turn, and to assess the manner in which the Law Society has implemented each recommendation.

The report shows that the 2004 Report to Convocation has been followed closely.

Introduction

Overview

The regulation of paralegals has been discussed and recommended in Ontario since the early 1990s. Many studies commissioned by government and by paralegals concluded that a regulatory system was essential to protect the public interest. The increasing number of individuals providing legal services without a licence, without rules, and often without insurance meant the public was increasingly at risk.

In August 1999 the Ontario Court of Appeal commented, in the case of *R. v. Romanowicz:*

> *A person who decides to sell T-shirts on the sidewalk needs a licence and is subject to government regulation. That same person can, however, without any form of government regulation, represent a person in a complicated criminal case where that person may be sentenced to up to 18 months imprisonment. Unregulated representation by agents who are not required to have any particular training or ability in complex and difficult criminal proceedings where a person's liberty and livelihood are at stake invites miscarriages of justice.*

There was, however, no consensus on the question of who should regulate paralegals. The 1990 Ianni Task Force recommended that paralegals be regulated within the Ministry of Consumer and Commercial Relations. In 2000, Justice Peter deCarteret Cory recommended a free-standing regulatory agency funded by the government. There were conflicting opinions also on the areas of practice for which paralegals should be licensed. There were calls to expand and recommendations to restrict the scope of practice.

There were concerns that the costs of creating a new government regulatory body would be significant and an unwanted burden to taxpayers. The time and money required to establish such a body also militated against it. The option of self-regulation by paralegals, although frequently discussed over the years, had not been achieved.

While regulation was not progressing, the presence of paralegals, particularly in traffic court and small claims court, and before administrative boards and tribunals, grew markedly. Most of these paralegals were competent and ethical. But stories began to appear in the media about members of the public being victimized by unscrupulous individuals providing legal services. Without a regulatory program in place for paralegals, members of the public had no recourse when problems arose. When problems with a lawyer arise, the public can turn to The Law Society of Upper Canada to address their concerns.

Early in 2004, the Attorney General of Ontario asked The Law Society of Upper Canada (the Law Society) to consider taking on the responsibility for regulating paralegals in the province. The Law Society established a Task Force that undertook extensive consultations through much of that year, meeting with paralegal associations, lawyers, judges, legal associations, community and private colleges and the public. Members of the Task Force travelled to Ottawa, London, Thunder Bay, North Bay, Sudbury, Kitchener-Waterloo, Orangeville, Windsor, Kingston and Toronto to gather input. They were then faced with the task of transforming hours of comment into a succinct and representative report. In September of 2004, the Law Society adopted the Task Force Report with 22 recommendations outlining a regulatory framework and a scope of practice. The Law Society submitted the report to the government.

After reviewing the report, the government introduced Bill 14. Consideration of the Bill included 14 days of public hearings by the legislature's Standing Committee on Justice Policy. Bill 14 contained amendments to the *Law Society Act*, expanding the mandate of the Law Society to provide for the regulation of paralegals in the public interest. The Bill was given Third Reading and received Royal Assent on October 19, 2006.

Making paralegal regulation a reality

With the passage of Bill 14, the Law Society had six months to put the fundamentals of an entirely new regulatory framework in place. Specifically, by May 1, 2007, the Law Society had to provide paralegal applicants with a registration process, application forms, insurance requirements and rules of professional conduct. Work also had to begin urgently on a licensing examination, and a fee structure. The administrative support necessary to accomplish all this drew heavily from every department in the Law Society.

At the beginning of the process no one knew how many paralegals were practising in Ontario. The Law Society and the paralegal associations estimated there might be between 750 and 1,000. No registry or database with contact information existed. No infrastructure was in place to contact paralegals, or to respond to their many inquiries about regulation.

From that starting point, the Law Society has built an entire regulatory system in two years, complete with educational standards, rules of professional conduct, a licensing process, insurance requirements, a public directory, a complaints and disciplinary process, and a compensation fund. This was accomplished by the Law Society without burdening taxpayers or the government.

The Paralegal Standing Committee

The Paralegal Standing Committee was the first part of the regulatory model to be implemented. This committee has five paralegal members, five lawyers and three lay members. The chair is a paralegal. The committee develops and recommends to Convocation the necessary policy for all aspects of licensing, accreditation, monitoring and discipline of paralegals. The individuals who made up the original committee were Chair Paul Dray, Vice-Chair William Simpson, Andrea Alexander,

Marion Boyd, James Caskey, Anne Marie Doyle, Michelle Haigh, Abraham Feinstein, Thomas Heintzman, Brian Lawrie, Margaret Louter, Stephen Parker and Bonnie Warkentin.

The work of the committee, supported by Law Society staff, continues to be extensive. The deadlines are often compressed. The Committee reviews all aspects of paralegal regulation and takes forward recommendations to Convocation.

In the first six months of 2007, the committee met eight times. Its reports for those meetings total 563 pages. It worked through a daunting range of issues including:

- Grandparent and transitional applicant criteria
- Application process, forms and reference letters
- *Paralegal Rules of Conduct*
- Trust account rules
- Exemptions and licensing by-laws
- Licensing process
- Insurance requirements
- Budget and fee schedule
- Communications plans
- Professional corporations and business structures rules.

Licensing process for grandparent and transitional candidates

Paralegals with at least three years prior experience providing legal services were invited to apply under a 'grandparent' provision with a six-month window, beginning May 1, 2007. Transitional candidates were those with less than three years experience but with relevant education or training. The application forms and instruction guides for both grandparent and transitional candidates were created and posted on-line in time for the May 1, 2007 implementation date. This required considerable technical support to build the web pages that housed the application, develop the application into a downloadable, fill-able PDF and Word document, and create a tool to automatically generate a unique application ID number for each application downloaded.

Through the same period, a major focus for staff from the Professional Development and Competence Department was the establishment of paralegal competencies, the development of reference materials, and the formulation of the licensing examination questions. This work was without precedent. Again, the deadlines were tight. The licensing examinations had to be produced in English and French, validated and kept entirely secure. Staff prepared a complete study guide in hard copy and electronic format to help paralegals prepare for the licensing examination.

Looking beyond the grandparent and transitional candidates, the Law Society was also working throughout this period with public and private colleges and with the Ministry of Training, Colleges and Universities to establish a system of standards and accreditation for paralegal diploma courses. By the end of the review period, there were nine accredited colleges offering programs of study that will give paralegal students the opportunity to write the licensing examination.

Many of the grandparent and transitional applicants applied during the last week. Client Service Centre staff along with volunteers from other staff departments worked virtually around the clock to review and process more than 2,200 applications that arrived by the October 31, 2007 deadline. Those applicants who met all the criteria were permitted to practise as "paralegal candidates" and invited to write a licensing examination early in 2008.

Paralegals were able to write the examination in English or French in five locations across the province: Toronto, London, Ottawa, Sudbury and Thunder Bay. This meant that Law Society staff needed to find secure venues and competent invigilators in all those cities. The first sitting of the examination was on January 17, 2008. Two additional sittings were provided on February 27 and April 2 for those applicants who were unable to attend the January session or who needed a second chance to write the examination.

Successful applicants were notified by the Law Society and invited to complete the licensing process by submitting their annual fee and a registration package, subject to the 'good character' review discussed below. By May of 2008, the Law Society began issuing licences. At the end of October 2008, the 2,000th licence had been issued.

Legal Affairs

The amendments to the *Law Society Act* contained in Bill 14 are extensive. One consequence has been the need to draft amendments to the Law Society's by-laws. This work, done by the Law Society's own legal department, has been a significant task, and continues to be so. Through the implementation of paralegal regulation, the Paralegal Standing Committee and Convocation have passed amendments to virtually every by-law of the Law Society. The revised by-laws must be translated into French and vetted carefully in both languages before being posted on the website.

Paralegal Rules of Conduct

In a very compressed time period, Law Society staff from the Professional Regulation Department developed a complete set of rules to govern the conduct of paralegals. The rules are based on the existing *Rules of Professional Conduct* for lawyers and on principles found in the 2004 *Report of the Task Force on Paralegal Regulation*, as well as on comments from stakeholders. The rules are structured around obligations to various parties, including general duties, as well as duties to clients, tribunals, other licensees and to the Law Society. Other issues covered by the rules are conflicts of interest, confidentiality, advocacy, civility, and fees and retainers.

Of particular importance was the establishment of the rules on trust accounts – an important safeguard for client fees in the event a paralegal becomes incapacitated or is otherwise unable to provide paid-for services. Once fully phased in, by 2010, these rules will be the same as the rules governing lawyers' trust accounts.

Work was then required on the process for receiving and investigating consumer complaints about paralegals. This meant updating and adapting procedures, policies and case management to ensure the Law Society would be able to deal with complaints about paralegals in a timely, fair, transparent and effective manner. The Law Society also established a compensation fund to help clients who have suffered financial loss as a result of a paralegal's dishonesty.

Good character requirement

During the grandparent and transitional licensing process, some 400 applicants disclosed matters that required an investigation of their good character. More than half have now been approved for licensing.

A dedicated team of Law Society staff is continuing to process the remaining matters and conclude investigations as soon as possible. In some cases, the Law Society expects a formal, public hearing will be necessary to determine whether a paralegal licence should be granted or refused.

These applicants are permitted to continue practising as long as they meet the requirements of the application process, such as maintaining professional liability insurance and complying with the *Paralegal Rules of Conduct*, until a Hearing Panel determines that they are ineligible for a licence. The public directory on the website denotes these individuals as 'paralegal candidates' instead of licensees.

New paralegal candidates

The next group of paralegals to be licensed are those who have been enrolled in a paralegal program of study ending in 2008. They were invited to write a licensing examination in August, with a second sitting in October 2008. There are about 300 of these candidates. Law Society staff prepared a complete licensing examination and study package for this group, just as for the grandparent candidates. Successful candidates will receive licences to practise before the end of the year, provided good character issues are not raised.

Communicating with paralegals, lawyers, and the public

The first communications priority in early 2007 was to reach paralegals who were already practising and those already enrolled in formal training to provide legal services – the 'grandparent' and 'transitional' applicants. No registry or database with contact information existed. The first formal communication between the Law Society and paralegal applicants was a teleconference held on April 24, 2007. More than 800 participants took part in the call. The licensing process for grandparent applicants was explained, as well as the rules for continuing to practise, before examinations were held and licences issued. An hour-and-a-half of questions and answers made up the second half of the teleconference.

After the teleconference the Law Society received over 200 queries by e-mail. Staff from Professional Regulation, Professional Development and Competence, Legal Affairs, Policy and the Client Service Centre met for two days to review and develop answers to the questions. A list of Questions and Answers was posted on

the website. Over the following two months, the Client Service Centre received an additional 600 e-mail enquiries. The majority of these questions were answered within two days. Client Service Centre staff continue to receive queries on a daily basis and strive to maintain the same response time.

Electronic registration for the teleconference allowed the Law Society to build a distribution list for e-mail use. The Law Society created an electronic newsletter, *Paralegal Update*, specifically for paralegals, with monthly summaries of new developments in the growth of the regulatory system. Nine editions of *Paralegal Update* have been issued to date. A new section dedicated to paralegals was created on the Law Society's website. Professional notices, amendments to rules and by-laws, insurance requirements and other material continue to be provided to paralegals through these pages. They attract several thousand visits every month, including more than 48,000 in the first half of 2008. Representatives of the Law Society continue to meet with paralegal organizations and to attend seminars and conferences as another way to provide current information. A second teleconference for paralegals, held in 2008, covered issues related to business structures and the use of trust accounts.

The Law Society also needed to keep lawyers, the courts and the public informed of the development and implementation of paralegal regulation. Law Society publications, including the *Ontario Lawyers Gazette* and the *Ontario Reports*, as well as media releases, the website, e-mails and printed brochures were distributed. Many media interviews have been given on all aspects of paralegal regulation. Staff have appeared as guest speakers at conferences and meetings with various members of the legal community.

Since May 2007, the Law Society has maintained a public directory of licensed paralegals. The directory provides contact information and is searchable by name or postal code. It mirrors the public directory for lawyers.

Other outreach activities

In building the regulatory model, the Law Society worked closely with other stakeholders in the legal system. This included establishing consultative roundtables with interested organizations and consulting with key contacts:

- Senior judges from all levels of court.
- Justices of the Peace and Deputy Small Claims Court Judges, before whom paralegals very often appear.
- Paralegal organizations including the Paralegal Society of Ontario, the Institute of Agents at Court (now the Licensed Paralegal Association of Ontario), the Paralegal Society of Canada and several other smaller groups and individual paralegals.
- College Advisory Group – this group, established by the Law Society, met several times to advise on the development of the requirements for the accredited college course and field placement.

- The Legal Organizations Group, including major legal organizations such as the Ontario Bar Association, The Advocates' Society and the County & District Law Presidents' Association, met several times.
- The Criminal Lawyers' Association and the Family Lawyers' Association also met with the Law Society several times.
- The Law Society organized advisory meetings with tribunals, to which a large number of the administrative tribunals in Ontario sent senior representatives. This was in addition to separate meetings with several of the larger tribunals, including:
    - The Financial Services Commission of Ontario (FSCO) – this tribunal had developed a form of paralegal regulation, the Register of Statutory Accident Benefit Representatives. The advice of the staff at FSCO was particularly helpful.
    - The Workplace Safety and Insurance Board (WSIB) – this board is one of the largest in Ontario in terms of paralegal activity and the Law Society continues to work closely with the WSIB on a range of issues.
    - The Workplace Safety and Insurance Appeals Tribunal, to which cases from WSIB may be appealed, also provided helpful advice.
    - The Assessment Review Board met with the Law Society several times to discuss its perspective.

The cost of paralegal regulation

The many studies undertaken prior to 2004 raised concerns about the costs of establishing a regulatory scheme for paralegals. A new regulatory body of this nature would normally be expected to incur significant new costs in overhead and development. The ability to use the existing Law Society infrastructure has enhanced the efficiency of the regulatory model. Paralegals pay a proportionate share of the services offered by the Law Society, including information technology, advisory services, human resources and policy development.

The licensing fee structure set out for paralegals and approved by Convocation in February 2007 was as follows:

• Application fee	$500
• Examination fee	$1,075
• Additional materials	$150
• Licensing fee	$125

The annual fee approved by Convocation was $845, which included a Compensation Fund levy of $145 and a capital levy of $75. Since licences were issued part way through 2008, paralegals were required to pay only a pro-rated portion of the annual fee for 2008.

The larger-than-expected number of applicants has assisted with the self-funding of the model. Taxpayers and lawyers have not borne the cost of paralegal regulation. The fee structure is designed to sustain this self-funding model.

Other perspectives on paralegal regulation

The Law Society welcomed the newly licensed paralegals in a series of receptions held in their honour in May and June of 2008. Six receptions were held, in London, Ottawa, Thunder Bay, Sudbury, and two in Toronto. More than 900 paralegals attended. Their comments were overwhelmingly positive about the work of the Law Society in creating and implementing the regulatory system.

In a recent note to the Chief Executive Officer of the Law Society, the Attorney General commented on paralegal regulation: "The Law Society continues to face this challenge with great professionalism and you have made remarkable progress. The people of Ontario will not only have greater access to justice as a result of increased access to a greater selection of legal service providers, but they will also be better served by licensed and regulated professionals."

The President of the Paralegal Society of Ontario, Chris Surowiak, says: "Paralegal regulation has been a positive step in our profession. The Law Society has an open door for the Paralegal Society of Ontario, which makes it easier to address our concerns. Knowing that exemptions to licensing are being looked at is important to us as well."

Looking ahead

Implicit in the comments of both the Attorney General and the President of the Paralegal Society of Ontario is the positive acceptance of the regulatory work done to date by the Law Society. There is also an understanding that further development of the model will be required over time.

The Law Society's implementation of paralegal regulation will continue to attract the interest of other jurisdictions. Paralegals are not regulated anywhere else in North America. The increasing demands for access to justice and consumer protection are not limited to Ontario. What happens here, therefore, will be watched very closely.

Ontario now has more than 2,000 licensed paralegals providing legal services throughout the province. A year ago, there were none. The regulation of paralegals by the Law Society is precedent-setting. It is transforming the provision of legal services in the province by improving consumer protection and access to justice.

The process of achieving regulation has been open and efficient. The regulatory system is self-funding and has won the support of paralegals, lawyers, judges and the public.

Action to Date

The Law Society approved a scope of practice for paralegals that included the currently permitted areas of practice, set out in By-Law 4, as follows:

LICENCE TO PROVIDE LEGAL SERVICES

Classes of licence

5. There shall be the following classes of licence to provide legal services in Ontario:

   1. Class P1.

Scope of activities

Class P1

Interpretation

6. (1) In this section, unless the context requires otherwise,

"claim" means a claim for statutory accident benefits within the meaning of the *Insurance Act*, excluding a claim of an individual who has or appears to have a catastrophic impairment within the meaning of the Statutory Accident Benefits Schedule;

"party" means a party to a proceeding;

"proceeding" means a proceeding or intended proceeding,

(a) in the Small Claims Court,

(b) in the Ontario Court of Justice under the *Provincial Offences Act*,

(c) in a summary conviction court under the *Criminal Code* (Canada),

(d) before a tribunal established under an Act of the Legislature of Ontario or under an Act of Parliament, or

(e) before a person dealing with a claim or a matter related to a claim, including a mediator, a person performing an evaluation, an arbitrator or the Director acting under section 280, 280.1, 282 or 283 or 284, respectively, of the *Insurance Act*;

"Statutory Accident Benefits Schedule" means the Statutory Accident Benefits Schedule within the meaning of the *Insurance Act*.

Activities authorized

(2) Subject to any terms, conditions, limitations or restrictions imposed on the class of licence or on the licensee and subject to any order made under the Act, a licensee who holds a Class P1 licence is authorized to do any of the following:

RECOMMENDATION ONE
(paragraph 85)

It is recommended that the scope of practice for paralegals be the currently permitted areas of practice, as set out in legislation and case law. This would include the following:

a. Small Claims Court: all matters in Small Claims Court, including being recognized by the Court for the purposes of costs.

b. The Ontario Court of Justice: all matters under the *Provincial Offences Act*.

c. Tribunals: all matters before provincial boards, agencies and tribunals that allow for appearances by agents.

d. Ontario Court of Justice: appeals under the *Provincial Offences Act*. Currently, section 109 of the *Provincial Offences Act* authorizes agents to appear on appeals.

1. Give a party advice on his, her or its legal interests, rights or responsibilities with respect to a proceeding or the subject matter of a proceeding.
2. Represent a party before,
   i. in the case of a proceeding in the Small Claims Court, before the Small Claims Court,
   ii. in the case of a proceeding under the *Provincial Offences Act*, before the Ontario Court of Justice,
   iii in the case of a proceeding under the *Criminal Code*, before a summary conviction court,
   iv. in the case of a proceeding before a tribunal established under an Act of the Legislature of Ontario or under an Act of Parliament, before the tribunal, and
   v. in the case of a proceeding before a person dealing with a claim or a matter related to a claim, before the person.
3. Anything mentioned in subsection 1 (7) of the Act, provided the activity is required by the rules of procedure governing a proceeding.
4. Select, draft, complete or revise, or assist in the selection, drafting, completion or revision of, a document for use in a proceeding.
5. Negotiate a party's legal interests, rights or responsibilities with respect to a proceeding or the subject matter of a proceeding.
6. Select, draft, complete or revise, or assist in the selection, drafting, completion or revision of, a document that affects a party's legal interests, rights or responsibilities with respect to a proceeding or the subject matter of a proceeding.

Action to Date

RECOMMENDATION TWO
(paragraph 91)

The definition of the provision of legal services attached at Appendix 3 be incorporated in the legislation.

The definition of the provision of legal services incorporated in section 1 of the Act closely follows the version at Appendix 3 of the 2004 Report. The relevant excerpt from section 1 of the Act is as follows:

Provision of legal services

(5) For the purposes of this Act, a person provides legal services if the person engages in conduct that involves the application of legal principles and legal judgment with regard to the circumstances or objectives of a person.

Same

(6) Without limiting the generality of subsection (5), a person provides legal services if the person does any of the following:

1. Gives a person advice with respect to the legal interests, rights or responsibilities of the person or of another person.
2. Selects, drafts, completes or revises, on behalf of a person,
   i. a document that affects a person's interests in or rights to or in real or personal property,
   ii. a testamentary document, trust document, power of attorney or other document that relates to the estate of a person or the guardianship of a person,
   iii. a document that relates to the structure of a sole proprietorship, corporation, partnership or other entity, such as a document that relates to the formation, organization, reorganization, registration, dissolution or winding-up of the entity,
   iv. a document that relates to a matter under the *Bankruptcy and Insolvency Act* (Canada),
   v. a document that relates to the custody of or access to children,
   vi. a document that affects the legal interests, rights or responsibilities of a person, other than the legal interests, rights or responsibilities referred to in subparagraphs i to v, or
   vii. a document for use in a proceeding before an adjudicative body.
3. Represents a person in a proceeding before an adjudicative body.
4. Negotiates the legal interests, rights or responsibilities of a person.

Representation in a proceeding

(7) Without limiting the generality of paragraph 3 of subsection (6), doing any of the following shall be considered to be representing a person in a proceeding:

1. Determining what documents to serve or file in relation to the proceeding, determining on or with whom to serve or file a document, or determining when, where or how to serve or file a document.

2. Conducting an examination for discovery.

3. Engaging in any other conduct necessary to the conduct of the proceeding.

Not practising law or providing legal services

(8) For the purposes of this Act, the following persons shall be deemed not to be practising law or providing legal services:

1. A person who is acting in the normal course of carrying on a profession or occupation governed by another Act of the Legislature, or an Act of Parliament, that regulates specifically the activities of persons engaged in that profession or occupation.

2. An employee or officer of a corporation who selects, drafts, completes or revises a document for the use of the corporation or to which the corporation is a party.

3. An individual who is acting on his or her own behalf, whether in relation to a document, a proceeding or otherwise.

4. An employee or a volunteer representative of a trade union who is acting on behalf of the union or a member of the union in connection with a grievance, a labour negotiation, an arbitration proceeding or a proceeding before an administrative tribunal.

5. A person or a member of a class of persons prescribed by the by-laws, in the circumstances prescribed by the by-laws.

Action to Date

Section 26.3 of the Act contains the new provisions permitting the Law Society to obtain an injunction prior to a conviction. The section reads as follows:

Order prohibiting contravention, etc.

26.3 (1) On the application of the Society, the Superior Court of Justice may,

(a) make an order prohibiting a person from contravening section 26.1, if the court is satisfied that the person is contravening or has contravened section 26.1;

(b) make an order prohibiting a person from giving legal advice respecting the law of a jurisdiction outside Canada in contravention of the by-laws, if the court is satisfied that the person is giving or has given legal advice respecting the law of a jurisdiction outside Canada in contravention of the by-laws.

No prosecution or conviction required

(2) An order may be made,

(a) under clause (1) (a), whether or not the person has been prosecuted for or convicted of the offence of contravening section 26.1;

(b) under clause (1) (b), whether or not the person has been prosecuted for or convicted of the offence of giving legal advice respecting the law of a jurisdiction outside Canada in contravention of the by-laws.

Order to vary or discharge

(3) Any person may apply to the Superior Court of Justice for an order varying or discharging an order made under subsection (1).

RECOMMENDATION THREE

(paragraph 94)

It is recommended that the *Law Society Act* be amended to provide for injunctive relief with the presumption of irreparable harm.

RECOMMENDATION FOUR
(paragraph 98)

The good character requirement should be the same for paralegals as it is for lawyers.

Action to Date

The good character requirement set out in By-Law 4, section 8, is a condition for the issuance of any licence by the Law Society, and is thus the same for both lawyers and paralegals. The 'good character' questions on the application form for paralegals are based on those for lawyers.

GENERAL REQUIREMENTS

Requirements for issuance of any licence

8. (1) The following are the requirements for the issuance of any licence under the Act:

1. The applicant must submit to the Society a completed application, for the class of licence for which application is made, in a form provided by the Society.
2. The applicant must pay the applicable fees, including the applicable application fee.
3. The applicant must be of good character.
4. The applicant must take the applicable oath.
5. The applicant must provide to the Society all documents and information, as may be required by the Society, relating to any licensing requirement.

Misrepresentations

(2) An applicant who makes any false or misleading representation or declaration on or in connection with an application for a licence, by commission or omission, is deemed thereafter not to meet, and not to have met, the requirements for the issuance of any licence under the Act.

Action to Date

RECOMMENDATION FIVE
(paragraph 100)

Applicants will be required to have successfully completed a college program approved by the Law Society.

The Law Society has established the criteria for the accreditation of academic institutions, which are now in the process of applying and being approved. As of the date of writing, nine colleges have been accredited. The requirement to have graduated from an accredited program is set out in By-Law 4. Colleges are given a transitional period to apply for accreditation and make the necessary changes to their curricula to meet the requirements. Colleges currently providing paralegal programming will have until May 1, 2010 to apply for accreditation or cease offering paralegal courses. Following the transitional period ending in 2010, only candidates who have graduated from approved programs will be permitted to apply for a P1 licence.

The requirements are set out in sections 12 and 13 of By-Law 4:

Requirements for issuance of Class P1 licence: application received after October 31, 2007 and prior to July 1, 2010

12. (1) The following are the requirements for the issuance of a Class P1 licence for an applicant who applies for the licence after October 31, 2007 and prior to July 1, 2010:

    1. The applicant must have graduated, within the three years prior to the application, from a legal services program in Ontario that, at the time the applicant graduated, was approved by the Minister of Training, Colleges and Universities and that included,

        i. 18 courses, the majority of which provided instruction on legal services that a licensee who holds a Class P1 licence is authorized to provide and one of which was a course on professional responsibility and ethics, and

        ii. a field placement of at least 120 hours.

    2. The applicant must have successfully completed the applicable licensing examination or examinations set by the Society.

Exemption from education requirement

(2) An applicant is exempt from the requirement mentioned in paragraph 1 of subsection (1) if, for an aggregate of at least three years, the applicant has exercised the powers and performed the duties of a justice of the peace in Ontario on a full-time basis.

Requirements for issuance of Class P1 licence: application received after June 30, 2010

13. (1) The following are the requirements for the issuance of a Class P1 licence for an applicant who applies for the licence after June 30, 2010:

    1. The applicant must have graduated from a legal services program in Ontario that was, at the time the applicant graduated from the program, an accredited program.

    2. The applicant must have successfully completed the applicable licensing examination or examinations set by the Society not more than three years prior to the application for licensing.

Action to Date

The Law Society remains of the view that the assessment of equivalencies is best accomplished by the accredited colleges providing paralegal programs, since they have the expertise required to assess the relevant equivalencies. The approved colleges will be responsible for granting advanced standing for any of the core competencies based on previous work experience, education or foreign training.

The only exception to this principle is the provision regarding justices of the peace in subsection 13 (2) of By-Law 4, set out below:

Exemption from education requirement

(2) An applicant is exempt from the requirement mentioned in paragraph 1 of subsection (1) if, for an aggregate of at least three years, the applicant has exercised the powers and performed the duties of a justice of the peace in Ontario on a full-time basis.

RECOMMENDATION SIX
(paragraph 104)

It is recommended that the colleges offering the approved programs conduct the assessment of equivalencies, subject to approval by the Law Society.

RECOMMENDATION SEVEN
(paragraph 108)

Law Society approved college programs must include an approved period of 'field placement' to provide students with workplace experience.

Action to Date

The Law Society's criteria for college accreditation include a period of practical workplace experience. Accredited paralegal programs must offer 830 program hours including 590 instructional hours dedicated to compulsory legal courses within a paralegal's permitted scope of practice and 120 hours of field placement. The field placement is an integral component of the college program.

To assure that the accredited paralegal programs maintain an appropriate level of instruction and assessment, each accredited program will be audited within the first three years of being accredited and within every five years thereafter at the discretion of the Law Society.

This quality assurance measure will support two regulatory goals:

- Assure the academic institution has implemented the required revisions to its curriculum in accordance with the approved competencies established by the Law Society.
- Assure that the academic institution maintains the required standards of competence training and assessment in order to continue as an approved accredited program.

Action to Date

The Law Society has developed and implemented licensing examinations for paralegals. The first sitting took place on January 17, 2008, with further sittings on February 27, April 2 and August 26, 2008. The next examination dates are October 29, 2008 and January 27, 2009. (Starting in 2009, the examination will take place three times a year on a regular schedule).

The requirement for all applicants to sit the examination is in By-Law 4, sections 11 to 14. Under section 15 of By-Law 4, applicants are permitted to write the examination up to three times. Candidates who fail the examination three times can be required to obtain further education before re-applying to the licensing process.

Requirements for issuance of Class P1 licence: application received prior to November 1, 2007

11. (1) The following are the requirements for the issuance of a Class P1 licence for an applicant who applies for the licence prior to November 1, 2007:

    1. The applicant must have done any one of the following:

        i. Provided legal services, that a licensee who holds a Class P1 licence is authorized to provide, on a full-time basis for a total of three years in the five years prior to May 1, 2007.

        ii. Obtained education, in a legal services program in Ontario, that the Society determines is equivalent to at least nine courses in a legal services program in Ontario approved by the Minister of Training, Colleges and Universities and provided legal services, that a licensee who holds a Class P1 licence is authorized to provide, in the five years prior to May 1, 2007, that include ten instances of representing a party before the Small Claims Court, before the Ontario Court of Justice, before a summary conviction court, before a tribunal established under an Act of the Legislature of Ontario or under an Act of Parliament or before a person dealing with a claim, within the meaning of section 6, or a matter related to a claim when the Small Claims Court, the Ontario Court of Justice, the summary conviction court the tribunal or the person was hearing the merits of a proceeding.

        iii. Graduated, within the three years prior to the application for licensing, from a legal services program in Ontario that, at the time the applicant graduated, was approved by the Minister of Training, Colleges and Universities and that included,

RECOMMENDATION EIGHT
(paragraph 111)

The Law Society should set licensing examinations that all applicants for a licence will be required to pass.

A. 18 courses, the majority of which provided instruction on legal services that a licensee who holds a Class P1 licence is authorized to provide and one of which was a course on professional responsibility and ethics, and

B. a field placement of at least 120 hours.

2. The applicant must have successfully completed the applicable licensing examination or examinations set by the Society.

3. The applicant must provide written confirmation from two persons, from a list of persons and in a form provided by the Society, verifying that the applicant has met the experience requirement mentioned in paragraph 1.

Interpretation: "full-time basis"

(2) For the purposes of this section, an applicant provides legal services on a full-time basis if the applicant provides legal services, on the average, 30 hours per week.

Requirements for issuance of Class P1 licence: application received after October 31, 2007 and prior to July 1, 2010

12. (1) The following are the requirements for the issuance of a Class P1 licence for an applicant who applies for the licence after October 31, 2007 and prior to July 1, 2010:

1. The applicant must have graduated, within the three years prior to the application, from a legal services program in Ontario that, at the time the applicant graduated, was approved by the Minister of Training, Colleges and Universities and that included,

i. 18 courses, the majority of which provided instruction on legal services that a licensee who holds a Class P1 licence is authorized to provide and one of which was a course on professional responsibility and ethics, and

ii. a field placement of at least 120 hours.

2. The applicant must have successfully completed the applicable licensing examination or examinations set by the Society.

Exemption from education requirement

(2) An applicant is exempt from the requirement mentioned in paragraph 1 of subsection (1) if, for an aggregate of at least three years, the applicant has exercised the powers and performed the duties of a justice of the peace in Ontario on a full-time basis.

Requirements for issuance of Class P1 licence: application received after June 30, 2010

13. (1) The following are the requirements for the issuance of a Class P1 licence for an applicant who applies for the licence after June 30, 2010:

1. The applicant must have graduated from a legal services program in Ontario that was, at the time the applicant graduated from the program, an accredited program.
2. The applicant must have successfully completed the applicable licensing examination or examinations set by the Society not more than three years prior to the application for licensing.

Exemption from education requirement

(2) An applicant is exempt from the requirement mentioned in paragraph 1 of subsection (1) if, for an aggregate of at least three years, the applicant has exercised the powers and performed the duties of a justice of the peace in Ontario on a full-time basis.

LICENSING EXAMINATIONS

General requirements

14. (1) A person who meets the following requirements is entitled to take a licensing examination set by the Society:

1. The person must register with the Society, prior to the day of the examination, by the time specified by the Society.
2. The person must submit to the Society a completed examination application, for the examination that the person wishes to take, in a form provided by the Society, prior to the day of the examination, by the time specified by the Society.
3. The person must pay the applicable examination fee, prior to the day of the examination, by the time specified by the Society.
4. The person must provide to the Society all documents and information, as may be required by the Society, relating to any requirement for taking an examination.
5. The person must not be ineligible to take the examination under this By-Law.

Misrepresentations

(2) A person who makes any false or misleading representation or declaration on or in connection with an examination application, by commission or omission, is deemed thereafter not to meet, and not to

have met, the requirements for taking a licensing examination and, subject to subsection (3), the successful completion of any licensing examination taken by the person is deemed thereafter to be void.

Deferred voiding of examination result

(3) Where the false or misleading representation mentioned in subsection (2) relates to meeting the requirement of paragraph 1 of subsection 9 (1) or paragraph 1 of section 14 and was made by the person in good faith, the person is deemed not to meet, and not to have met, the requirements for taking a licensing examination, and the successful completion of any licensing examination taken by the person is deemed to be void, if the person does not meet the requirement of paragraph 1 of subsection 9 (1) or paragraph 1 of section 14, as the case may be, by the end of the licensing cycle in which the person registered with the Society to be eligible to take the applicable licensing examination.

Licensing examination for Class L1 licence

15. (1) A person who meets the requirement of paragraph 1 of subsection 9 (1) is entitled to take a licensing examination that is a requirement for the issuance of a Class L1 licence.

Licensing examination for Class P1 licence

(2) A person is entitled to take a licensing examination that is a requirement for a Class P1 licence if,

(a) in the case of an applicant who applies for a Class P1 licence prior to November 1, 2007, the person meets the requirements of paragraphs 1 and 3 of subsection 11 (1);

(b) in the case of an applicant who applies for a Class P1 after October 31, 2007 and prior to July 1, 2010, the person meets the requirement of paragraph 1 of section 12; and

(c) in the case of an applicant who applies for a Class P1 licence after June 30, 2010, the person meets the requirement of paragraph 1 of section 13.

Failing licensing examination

(3) A person who qualified to take a licensing examination that is a requirement for a Class P1 licence by meeting the requirement of subparagraph i or ii of paragraph 1 of subsection 11 (1) and failed the examination on three occasions may no longer qualify to take the examination by meeting the requirement of subparagraph i or ii of paragraph 1 of subsection 11 (1).

Action to Date

The grandparent eligibility requirements are set out in section 11 of By-Law 4. In situations where an applicant required accommodation under one of the grounds of the Ontario *Human Rights Code* the applicant was asked to provide details of work history during the last seven years.

Requirements for issuance of Class P1 licence: application received prior to November 1, 2007

11. (1) The following are the requirements for the issuance of a Class P1 licence for an applicant who applies for the licence prior to November 1, 2007:

1. The applicant must have done any one of the following:
   i. Provided legal services, that a licensee who holds a Class P1 licence is authorized to provide, on a full-time basis for a total of three years in the five years prior to May 1, 2007.
   ii. Obtained education, in a legal services program in Ontario, that the Society determines is equivalent to at least nine courses in a legal services program in Ontario approved by the Minister of Training, Colleges and Universities and provided legal services, that a licensee who holds a Class P1 licence is authorized to provide, in the five years prior to May 1, 2007, that include ten instances of representing a party before the Small Claims Court, before the Ontario Court of Justice, before a summary conviction court, before a tribunal established under an Act of the Legislature of Ontario or under an Act of Parliament or before a person dealing with a claim, within the meaning of section 6, or a matter related to a claim when the Small Claims Court, the Ontario Court of Justice, the summary conviction court the tribunal or the person was hearing the merits of a proceeding.
   iii. Graduated, within the three years prior to the application for licensing, from a legal services program in Ontario that, at the time the applicant graduated, was approved by the Minister of Training, Colleges and Universities and that included,
      A. 18 courses, the majority of which provided instruction on legal services that a licensee who holds a Class P1 licence is authorized to provide and one of which was a course on professional responsibility and ethics, and
      B. a field placement of at least 120 hours.
2. The applicant must have successfully completed the applicable licensing examination or examinations set by the Society.

RECOMMENDATION NINE
(paragraph 117)

Applicants should be eligible for grandparented status if they have worked as paralegals in areas covered by the proposed scope of practice described above, either independently or in employed positions, for three of the last five years, except where the person requires accommodation under one of the grounds in the Ontario *Human Rights Code*, in which case the requirement should be three years within the last seven.

3. The applicant must provide written confirmation from two persons, from a list of persons and in a form provided by the Society, verifying that the applicant has met the experience requirement mentioned in paragraph 1.

Interpretation: "full-time basis"

(2) For the purposes of this section, an applicant provides legal services on a full-time basis if the applicant provides legal services, on the average, 30 hours per week.

Action to Date

The Law Society established a grandparent application period from May 1, 2007 to October 31, 2007. This is defined under section 11 in By-Law 4 set out above. In addition, under section 30 of By-Law 4, a time limit for providing legal services without a licence was defined as follows:

Time limit on providing Class P1 legal services without a licence

(2) The individual mentioned in paragraph 8 of subsection (1) may, without a licence, provide legal services in Ontario that a licensee who holds a Class P1 licence is authorized to provide only until,

(a) if the individual is granted a licence prior to May 1, 2008, the day the individual is granted a licence; or

(b) if the individual is not granted a licence prior to May 1, 2008, the later of,

(i) April 30, 2008,

(ii) the day the individual is granted a licence, and

(iii) the effective date of the final decision and order, with respect to the individual's application for a Class P1 licence,

(A) of the Hearing Panel, or

(B) of the Appeal Panel, if there is an appeal from the decision and order of the Hearing Panel.

RECOMMENDATION TEN
(paragraph 119)

Applicants seeking grandparented status should be given six months to apply, from the coming into force of the relevant sections of the legislation.

RECOMMENDATION ELEVEN
(paragraph 121)

Applicants for grandparented status should be required to submit at least two references, and conform to other criteria to be developed.

Action to Date

Section 11, paragraph (1) 3 of By-Law 4 provides as follows:

> ***Requirements for issuance of Class P1 licence: application received prior to November 1, 2007***
>
> 11. (1) The following are the requirements for the issuance of a Class P1 licence for an applicant who applies for the licence prior to November 1, 2007: ...
>
> 3. The applicant must provide written confirmation from two persons, from a list of persons and in a form provided by the Society, verifying that the applicant has met the experience requirement mentioned in paragraph 1.

Under these provisions, the criteria for grandparent applicants required applicants to:

1. be of good character.
2. have provided legal services within the permitted scope of practice, on a full-time basis[1] for a minimum of three years. This work experience must be supported by a minimum of two statements of reference:
   a. One reference from a judge, justice of the peace, deputy judge or lawyer licensed to practise law in Ontario and in good standing with The Law Society of Upper Canada, or a member or senior employee of a tribunal, agency, Small Claims Court, Provincial Offences Court or summary convictions court before which the applicant has appeared, who must attest to the experience of the applicant in advocacy work, including:
      - Nature of the work experience
      - Recentness of the experience[2]
      - Duration of the applicant's legal services provision[3].
   b. The other referee may be from the list above, or may be a client, and must attest to the experience of the applicant and the context within which the applicant provided the legal services.

[1] The provision of legal services in areas within the permitted scope of practice must have been the applicant's predominate activity; on average the applicant must have spent a minimum of 30 hours per week providing those legal services.

[2] The applicant must have provided such legal services for three years out of the last five years except where the person requires accommodation under one of the grounds in the Ontario *Human Rights Code*, in which case the requirement is three years within the last seven years.

[3] This referee must attest to having direct knowledge of the applicant's activities as a legal services provider during the required three-year minimum period.

Action to Date

By-Law 4 establishes one class of licence for paralegals, Class P1, as follows:

LICENCE TO PROVIDE LEGAL SERVICES

Classes of licence

5. There shall be the following classes of licence to provide legal services in Ontario:

1. Class P1.

RECOMMENDATION TWELVE
(paragraph 135)

One general licence should be established initially, but the legislation should be designed to permit the creation of further categories in future, should it be determined that this is appropriate in the public interest.

RECOMMENDATION THIRTEEN
(paragraph 152)

As a first step in regulation, mandatory licensing should be applied only to those paralegals providing legal services to members of the public who pay for those services, either directly or indirectly.

Action to Date

The implementation of this recommendation was achieved by having the licensing provisions in the *Law Society Act* apply to all persons providing legal services, with a short list of exemptions in the *Act* itself and provision for further exemptions by by-law. The criteria set out in the 2004 consultation document have been taken into account. These are:

a) Whether there are vulnerable clients in need of consumer protection;

b) Whether the persons concerned are already adequately regulated by another professional body; and

c) Whether there is a strong policy rationale for exemption.

In addition, further criteria were developed to assist in considering requests for exemptions. These include:

a) Are applicants offering service to the public?

b) Are applicants otherwise accountable? (e.g. are they public servants)

c) Are applicants adequately insured?

d) Are applicants properly trained for the service they provide?

e) Are the applicants properly supervised?

On the basis of the above criteria and detailed consideration of each application, the exemptions set out in By-Law 4 were developed, as follows:

PART IV

NOT PRACTISING LAW OR PROVIDING LEGAL SERVICES

Not practising law or providing legal services

28. For the purposes of this Act, the following persons shall be deemed not to be practising law or providing legal services:

Aboriginal Courtwork Program

1. A person who delivers courtworker services to Aboriginal people through an Aboriginal delivery agency that has contracted with the Government of Ontario or the Government of Canada to deliver courtworker services as part of the Aboriginal Courtwork Program.

Other profession or occupation

2. A person whose profession or occupation is not the provision of legal services or the practice of law, who acts in the normal course of carrying on that profession or occupation, excluding representing a person in a proceeding before an adjudicative body.

PART V

Providing Class P1 legal services without a licence

30. (1) Subject to subsections (2) and (3), the following may, without a licence, provide legal services in Ontario that a licensee who holds a Class P1 licence is authorized to provide:

In-house legal services provider

1. An individual who,
   i. is employed by a single employer that is not a licensee or a licensee firm,
   ii. provides the legal services only for and on behalf of the employer, and
   iii. does not provide any legal services to any person other than the employer.

Legal clinics

2. An individual who,
   i. is any one of the following:
      A. An individual who is enrolled in a degree program at an accredited law school and volunteers in or is completing a clinical education course at a clinic, within the meaning of the *Legal Aid Services Act, 1998*, that is funded by Legal Aid Ontario.
      B. An individual who is employed by a clinic, within the meaning of the *Legal Aid Services Act, 1998*, that is funded by Legal Aid Ontario,
   ii. provides the legal services through the clinic to the community that the clinic serves and does not otherwise provide legal services, and
   iii. has professional liability insurance coverage for the provision of the legal services in Ontario that is comparable in coverage and limits to professional liability insurance that is required of a licensee who holds a Class L1 licence.

Student legal aid services societies

3. An individual who,
   i. is enrolled in a degree program at an accredited law school,
   ii. volunteers in, is employed by or is completing a clinical education course at a student legal aid services society, within the meaning of the *Legal Aid Services Act, 1998*,
   iii. provides the legal services through the clinic to the community that the clinic serves and does not otherwise provide legal services, and

iv. provides the legal services under the direct supervision of a licensee who holds a Class L1 licence employed by the student legal aid services society.

Student *pro bono* programs

3.1 An individual who,

i. is enrolled in a degree program at an accredited law school,

ii. provides the legal services through programs established by Pro Bono Students Canada, and

iii. provides the legal services under the direct supervision of a licensee who holds a Class L1 licence.

Not-for-profit organizations

4. An individual who,

i. is employed by a not-for-profit organization that is established for the purposes of providing the legal services and is funded by the Government of Ontario, the Government of Canada or a municipal government in Ontario,

ii. provides the legal services through the organization to the community that the organization serves and does not otherwise provide legal services, and

iii. has professional liability insurance coverage for the provision of the legal services in Ontario that is comparable in coverage and limits to professional liability insurance that is required of a licensee who holds a Class L1 licence.

Acting for family, friend or neighbour

5. An individual,

i. whose profession or occupation is not and does not include the provision of legal services or the practice of law,

ii. who provides the legal services only occasionally,

iii. who provides the legal services only for and on behalf of a related person, within the meaning of the *Income Tax Act* (Canada), a friend or a neighbour, and

iv. who does not expect and does not receive any compensation, including a fee, gain or reward, direct or indirect, for the provision of the legal services.

Constituency assistants

6. An individual,

i. whose profession or occupation is not and does not include the provision of legal services or the practice of law,

ii. who is any one of the following:

A. A member of Parliament or his or her designee,

B. A member of Provincial Parliament or his or her designee,

C. A member of a council of a municipality or his or her designee, and

iii. who provides the legal services for and on behalf of a constituent of the member.

Other profession or occupation

7. An individual,

i. whose profession or occupation is not the provision of legal services or the practice of law,

ii. who provides the legal services only occasionally,

iii. who provides the legal services as ancillary to the carrying on of her or his profession or occupation, and

iv. who is a member of,

A. the Human Resources Professionals Association of Ontario,

B. the Ontario Professional Planners Institute,

C. the Board of Canadian Registered Safety Professionals, or

D. the Appraisal Institute of Canada.

Individuals intending to apply or who have applied for a Class P1 licence

8. An individual

i. whose profession or occupation, prior to May 1, 2007, was or included the provision of such legal services,

ii. who will apply, or has applied, by not later than October 31, 2007, to the Society for a Class P1 licence,

iii. who has professional liability insurance for the provision of the legal services in Ontario that is comparable in coverage and limits to professional liability insurance that is required of a holder of a Class L1 licence, and

iv. who complies with the Society's rules of professional conduct for licensees who hold a Class P1 licence.

Time limit on providing Class P1 legal services without a licence

(2) The individual mentioned in paragraph 8 of subsection (1) may, without a licence, provide legal services in Ontario that a licensee who holds a Class P1 licence is authorized to provide only until,

(a) if the individual is granted a licence prior to May 1, 2008, the day the individual is granted a licence; or

(b) if the individual is not granted a licence prior to May 1, 2008, the later of,

(i) April 30, 2008,

(ii) the day the individual is granted a licence, and

(iii) the effective date of the final decision and order, with respect to the individual's application for a Class P1 licence,

A. of the Hearing Panel, or

B. of the Appeal Panel, if there is an appeal from the decision and order of the Hearing Panel.

Statutory accident benefits

(3) No individual may, without a licence, provide legal services in Ontario related to a claim, or a matter related to a claim, for statutory accident benefits within the meaning of the *Insurance Act* unless the person complies with the provisions of the *Insurance Act* and the regulations made thereunder with respect to the provision of the legal services.

Interpretation

31. (1) In this section,

"employer" has the meaning given it in the *Workplace Safety and Insurance Act, 1997*;

"injured workers' group" means a not-for-profit organization that is funded by the Workplace Safety and Insurance Board to provide specified legal services to workers;

"public servant" has the meaning given it in the *Public Service Act*;

"survivor" has the meaning given it in the *Workplace Safety and Insurance Act, 1997*;

"worker" has the meaning given it in the *Workplace Safety and Insurance Act, 1997*.

Office of the Worker Adviser

(2) An individual who is a public servant in the service of the Office of the Worker Adviser may, without a licence, provide the following legal services through the Office of the Worker Adviser:

1. Advise a worker, who is not a member of a trade union, or the worker's survivors of her or his legal interests, rights and responsibilities under the *Workplace Safety and Insurance Act, 1997*.

2. Act on behalf of a worker, who is not a member of a trade union, or the worker's survivors in connection with matters and proceedings before the Workplace Safety and Insurance Board or the Workplace Safety and Insurance Appeals Tribunal or related proceedings.

Office of the Employer Adviser

(3) An individual who is a public servant in the service of the Office of the Employer Adviser may, without a licence, provide the following legal services through the Office of the Employer Adviser:

1. Advise an employer of her, his or its legal interests, rights and responsibilities under the *Workplace Safety and Insurance Act, 1997* or any predecessor legislation.
2. Act on behalf of an employer in connection with matters and proceedings before the Workplace Safety and Insurance Board or the Workplace Safety and Insurance Appeals Tribunal or related proceedings.

Injured workers' groups

(4) An individual who volunteers in an injured workers' group may, without a licence, provide the following legal services through the group:

1. Give a worker advice on her or his legal interests, rights or responsibilities under the *Workplace Safety and Insurance Act, 1997*.
2. Act on behalf of a worker in connection with matters and proceedings before the Workplace Safety and Insurance Board or the Workplace Safety and Insurance Appeals Tribunal or related proceedings.

Interpretation

32. (1) In this section,

"dependants" means each of the following persons as were wholly or partly dependent upon the earnings of a member of a trade union at the time of the member's death or who, but for the member's incapacity due to an accident, would have been so dependent:

1. Parent, stepparent or person who stood in the role of parent to the member.
2. Sibling or half-sibling.
3. Grandparent.
4. Grandchild;

"survivor" means a spouse, child or dependant of a deceased member of a trade union;

"workplace" means,

(a) in the case of a former member of a trade union, a workplace of the former member when he or she was a member of the trade union; and

(b) in the case of a survivor, a workplace of the deceased member when he or she was a member of the trade union.

Trade unions

(2) An employee of a trade union, a volunteer representative of a trade union or an individual designated by the Ontario Federation of Labour may, without a licence, provide the following legal services to the union, a member of the union, a former member of the union or a survivor:

1. Give the person advice on her, his or its legal interests, rights or responsibilities in connection with a workplace issue or dispute.
2. Act on behalf of the person in connection with a workplace issue or dispute or a related proceeding before an adjudicative body other than a federal or provincial court.

In establishing the exemptions in By-Law 4, the Law Society felt that it was important to assess the functioning of these exemptions against the Society's regulatory role and responsibilities, as set out in sections 4.1 and 4.2 of the *Law Society Act*, to determine whether each exemption should be continued or revoked. The review requirement is set out in section 33 of By-Law 4:

Review

33. Not later than May 1, 2009, the Society shall assess the extent to which permitting the individuals mentioned in sections 30, 31 and 32 to provide legal services without a licence is consistent with the function of the Society set out in section 4.1 of the Act and the principles set out in section 4.2 of the Act and determine whether the sections, in whole or in part, should be maintained or revoked.

Action to Date

The scope of practice set out in By-Law 4 includes appearing in summary conviction court under the *Criminal Code* of Canada, and before federal tribunals. While the Law Society takes the position that the P1 licence should be recognized by federal tribunals that permit agents to appear, it has not been recognized by the Immigration and Refugee Board. The relevant provisions in By-Law 4 are as follows:

Activities authorized

6. (2) Subject to any terms, conditions, limitations or restrictions imposed on the class of licence or on the licensee and subject to any order made under the Act, a licensee who holds a Class P1 licence is authorized to do any of the following:
    1. Give a party advice on his, her or its legal interests, rights or responsibilities with respect to a proceeding or the subject matter of a proceeding.
    2. Represent a party before,
        i. in the case of a proceeding in the Small Claims Court, before the Small Claims Court,
        ii. in the case of a proceeding under the Provincial Offences Act, before the Ontario Court of Justice,
        iii. in the case of a proceeding under the Criminal Code, before a summary conviction court,
        iv. in the case of a proceeding before a tribunal established under an Act of the Legislature of Ontario or under an Act of Parliament, before the tribunal, and
        v. in the case of a proceeding before a person dealing with a claim or a matter related to a claim, before the person.

RECOMMENDATION FOURTEEN
(paragraph 161)

To provide consumer protection, the licensing requirement should apply to persons working in areas of federal jurisdiction.

RECOMMENDATION FIFTEEN
(paragraph 165)

It is recommended that the legislation be designed to achieve flexibility by placing the minimum of detail in the *Law Society Act* itself, with most detail in regulations or in Law Society by-laws.

Action to Date

A review of the provisions in the *Law Society Act* and by-laws shows that most of the details of the regulatory model are found in the by-laws.

Action to Date

Subsection 2(2) of the *Law Society Act* provides,

2. (1) The Law Society of Upper Canada (previously referred to in French as Société du barreau du Haut-Canada) is continued under the name of The Law Society of Upper Canada in English and Barreau du Haut-Canada in French.

Status

(2) The Society is a corporation without share capital and its members at a point in time are,

. . . . . .

(d) the persons who are at that time licensed to provide legal services in Ontario, who shall be referred to as paralegal members.

RECOMMENDATION SIXTEEN
(paragraph 170)

Licensed paralegals should be described as, "Licensed pursuant to the laws of Ontario."

RECOMMENDATION SEVENTEEN
(paragraph 181)

It is recommended that the governance model set out above be adopted.

Action to Date

The Law Society established the Paralegal Standing Committee by By-Law 3, following the model set out in section 25.1 of the *Law Society Act* as follows:

PART VII

PARALEGAL STANDING COMMITTEE

INTERPRETATION

Interpretation: "Committee"

128. In this Part, "Committee" means the Paralegal Standing Committee.

ESTABLISHMENT OF COMMITTEE

Establishment of Committee

129. There is hereby established a standing committee to be known as the Paralegal Standing Committee in English and Comité permanent des parajuristes in French.

JURISDICTION OF COMMITTEE

Jurisdiction of Committee

130. The Committee is responsible for developing, for Convocation's approval, policy options on the following matters:

1. The classes of licence for the provision of legal services in Ontario issued under the Act, the scope of activities authorized under each class of licence and the terms, conditions, limitations or restrictions imposed on each class of licence.
2. The licensing of persons to provide legal services in Ontario, including the qualifications and other requirements for licensing and the application for licensing.
3. The regulation of persons licensed to provide legal services in Ontario in respect of,
   i. the handling of money and other property, and
   ii. the keeping of financial records.
4. The rules of professional conduct applicable to persons licensed to provide legal services in Ontario.
5. The requirements to be met by persons licensed to provide legal services in Ontario with respect to indemnity for professional liability.
6. The professional competence of persons licensed to provide legal services in Ontario, including,
   i. the requirements to be met by such persons with respect to continuing legal education, and
   ii. the review of the professional business of such persons.

7. Guidelines for professional competence applicable to persons licensed to provide legal services in Ontario.
8. The provision of legal services through professional corporations.
9. The provision of information to the Society, and the filing of certificates, reports and other documents, relating to the Society's functions under the Act, by persons licensed to provide legal services in Ontario.
10. The election of five persons who are licensed to provide legal services in Ontario as members of the Committee.
11. The election of two persons who are licensed to provide legal services in Ontario as benchers.
12. The appointment of the chair of the Committee.

OPERATION OF COMMITTEE

Term of office of Committee members appointed by Convocation

131. (1) Subject to subsection (2), a person who is appointed as a member of the Committee by Convocation shall continue to be a member of the Committee until his or her successor is appointed.

Removal from Committee

(2) Convocation may remove from the Committee any person that it has appointed as a member of the Committee if the person fails to attend three consecutive meetings of the Committee.

Quorum

132. Four members of the Committee constitute a quorum for the transaction of business.

Meetings by telephone conference call, etc.

133. The Committee may meet to transact business by means of such telephone, electronic or other communication facilities as permit all persons participating in the meeting to communicate with each other instantaneously and simultaneously.

Right to attend meeting

134. (1) Subject to subsection (2), no person other than a member of the Committee may attend a meeting of the Committee.

Same

(2) The following persons who are not members of the Committee may attend a meeting of the Committee:
1. A bencher.
2. An officer or employee of the Society.
3. A person not mentioned in paragraph 1 or 2 with the permission of the Committee.

Voting rights

135. Only members of the Committee may vote at meetings of the Committee.

RECOMMENDATION EIGHTEEN
(paragraph 188)

It is recommended that the model for the professional regulation of paralegals should follow that currently in place for lawyers.

Action to Date

The Task Force recommended that the regulatory model for paralegals should follow as closely as possible the current regulatory model for lawyers. This would require the development of:

- rules of professional conduct
- structures for proceedings authorization and review of complaints
- rules of practice and procedure
- a unique identifying licence number like the membership number lawyers have
- confidentiality rules for paralegals that mirror confidentiality rules for lawyers.

The Law Society established *Paralegal Rules of Conduct*. The Rules of Conduct were in effect as of the start of the grandparent period May 1, 2007. Candidates who applied under the grandparent provision in By-Law 4 were obligated to comply with the rules and regulations of the society during the grandparent period as part of the application process.

In establishing the rules, the primary objectives were that the rules should be:

- consistent with the *Rules of Professional Conduct for Lawyers*
- focused on the ethical and professional obligations of paralegals
- clear and accessible for paralegals and the public
- enforceable in a fair and transparent process.

The paralegal rules are not identical to the rules that are in place for lawyers, but they are drawn from the same principles, namely:

- integrity, honesty, honour, courtesy and civility
- competence
- duties to client including an obligation to hold in strict confidence all information concerning the business affairs of a client as recommended by the Task Force
- conflict of interest
- advocacy
- duty to the administration of justice
- practice management and responsibilities to the Law Society.

Like lawyers, paralegal licensees are obligated to comply with all the rules and regulations set by the Society.

The complaints process for paralegals is effectively identical to the process that is in place for lawyers. Complainants fill out a complaint form outlining the details with regard to the complaint and issues that they have experienced in their dealings with a licensed paralegal. The complaint form is submitted to Complaints Services. Complaints Services is responsible for doing the initial assessment of the

complaint to ensure that the required information and form is complete and determine whether the complaint should be forwarded to Complaints Resolution or if it should proceed to Investigations. The majority of the complaints that are received by the Law Society are resolved and usually do not require formal discipline proceedings.

As recommended by the Task Force the Law Society did establish a system to assign paralegal licensees a licensee number similar to the process that is in place for lawyers. Upon becoming a licensee a paralegal is assigned a licensee number. This number is a unique number that identifies them as a licensee and is used in their dealings with the Law Society.

RECOMMENDATION NINETEEN
(paragraph 192)

It is recommended that,

a. the same process used for reviewing legal fees be applied to paralegal fees;

b. contingency fees not be prohibited outright but that the rules governing contingency fees for lawyers should apply to paralegals also; and

c. licensed paralegals be required to maintain trust accounts for retainers and any other funds received in trust, and comply with requirements for record keeping and handling of money similar to those of lawyers.

Action to Date

a. Review of Paralegal Fees

The establishment of a process to review paralegal fees in the same manner as lawyers' fees would require legislative change. The Law Society continues to support the making of the necessary legislative changes.

b. Contingency Fee Arrangements

Paralegals are permitted to enter into contingency fee arrangements under Rule 5 of the *Paralegal Rules of Conduct*. The rules are as follows:

Contingency Fees

(6) Except in quasi-criminal or criminal matters, a paralegal may enter into a written agreement that provides that the paralegal's fee is contingent, in whole or in part, on the successful disposition or completion of the matter for which the paralegal's services are to be provided.

(7) In determining the appropriate percentage or other basis of a contingency fee under subrule (6), the paralegal shall advise the client on the factors that are being taken into account in determining the percentage or other basis, including the likelihood of success, the nature and complexity of the claim, the expense and risk of pursuing it, the amount of the expected recovery, who is to receive an award of costs and the amount of costs awarded.

(8) The percentage or other basis of a contingency fee agreed upon under subrule (6) shall be fair and reasonable, taking into consideration all of the circumstances and the factors listed in subrule (7).

c. Handling Money and Record Keeping

The provisions governing trust accounts and requirements for record keeping are set out in By-Law 9 and apply equally to lawyers and paralegals.

The only exception to this is the provision for a transitional period, during which paralegals who have received funds prior to licensing are not required to transfer such fees to a trust account, the transitional period starting on the day they receive their licence and concluding on May 1, 2010. This provision was designed to prevent sudden cash flow problems for paralegals.

Any fees collected prior to licensing for which the services had not been rendered by May 1, 2010 will have to be placed in trust on that date. This is set out in By-Law 9 subsection 7 (3.1) as follows:

Money to be paid into trust account: money received before licence issued

(3.1) If a licensee who holds a Class P1 licence receives from a person, prior to being issued the licence, money for services yet to be rendered to a client and the licensee does not perform the services for the client by May 2, 2010, the licensee shall on May 3, 2010 pay the money into a trust account.

RECOMMENDATION TWENTY
(paragraph 198)

Licensed paralegals should be required to maintain $1 million errors and omissions insurance coverage.

Action to Date

In implementing this recommendation, the Law Society considered the scope of practice of paralegals, particularly in the fields of workers' compensation and automobile insurance, where the sums of money involved can be very large. On this basis, it was decided that the public interest required a higher level of insurance, comparable to that held by lawyers. Unlike lawyers, however, the required insurance can be obtained from the private insurance market and there are currently several providers for paralegals to choose from. For 2008, typical premiums paid by licensed paralegals are in the $900 to $1,200 range, compared to a typical range of $1,500 to $2,300 for lawyers, depending on the program selected.

The insurance requirements for paralegals are set out in sections 12 and 13 of By-Law 6 as follows:

LICENSEES HOLDING A CLASS P1 LICENCE

MANDATORY INSURANCE

Mandatory insurance

12. (1) Every licensee who holds a Class P1 licence shall maintain insurance against professional liability under a policy of professional liability insurance issued by a company licensed to carry on business in the province of Ontario which complies with the following minimum requirements and is otherwise comparable to a policy of professional liability insurance issued by the Lawyers' Professional Indemnity Company to a licensee who holds a Class L1 licence:

    1. A policy limit for each single claim of not less than $1 million and an aggregate policy limit for all claims of not less than $2 million per year.
    2. A maximum deductible amount under the policy that is reasonable in relation to the financial resources of the licensee.
    3. Coverage for liability for errors, omissions and negligent acts arising out of the provision by the licensee of legal services authorized under a Class P1 licence.
    4. A provision granting an extended reporting period of ninety days from the date of cancellation of the policy.
    5. A provision naming the Society as an additional insured, for the purposes of reporting claims and receiving notice of the cancellation or amendment of the policy.
    6. A provision that the policy may not be cancelled or amended without at least 60 days written notice to the Society.

Exemption from insurance requirement

(2) A licensee is not required to be insured against professional liability under subsection (1) if the licensee provides written evidence to the satisfaction of the Society that,

(a) the licensee is not providing legal services in Ontario; or

(b) the licensee is providing legal services in Ontario in the circumstances specified in paragraph 1, 2 or 4 of subsection 30 (1) of By-Law 4, subsection 31 (2), (3) or (4) of By-Law 4 or subsection 32 (2) of By-Law 4.

Proof of compliance with s. 12

13. A licensee shall, prior to the commencement of the provision of legal services and on an annual basis thereafter, by not later than the anniversary date of the commencement of the provision of legal services, provide written evidence to the satisfaction of the Society that the licensee is in compliance with section 12.

RECOMMENDATION TWENTY-ONE
(paragraph 200)

A paralegal compensation fund shall be established, to which paralegals will be required to contribute.

Action to Date

In February of 2008, the Law Society established guidelines for the Paralegal Compensation Fund. The provisions in the Act govern both lawyer and paralegal licensees. There is a single Compensation Fund, with separate pools of money for lawyers and paralegal licensees. The purpose of the Fund is to assist clients who have lost money as a result of a licensee's dishonesty. For claims involving paralegals, Convocation approved a per claimant limit of $10,000. Licensed paralegals will finance the Fund through an annual levy. In 2008, the levy for the Paralegal Compensation Fund was $145.

Action to Date

The funding model was originally based on the Law Society underwriting the cost of the creation of the paralegal regulatory model with a contribution from grandparent paralegal applicants. This was projected to generate a deficit in the start-up costs of approximately $1.6 million, to be funded by the Law Society and recovered over a number of years from an annual levy on licensed paralegals. However, the actual number of paralegal applicants far exceeded the expected number contained in the budgetary estimates so that the start-up costs have been fully recovered from paralegals.

RECOMMENDATION TWENTY-TWO
(paragraph 204)

It is recommended that,

a. the model be designed to be self–funding; and

b. until the model is self-funding, the province should provide the funding to create and maintain the regulatory model, including funding for the prosecution of those who fail to obtain a licence.

All of which is respectfully submitted.

W. A. Derry Millar,
Treasurer

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